



Paper No. 8

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OFFICE OF PETITIONS

In re Application of :  
Wang, et al. :  
Application No. 09/817,869 : DECISION ON PETITION  
Deposited: March 26, 2001 :  
Attorney Docket No. 30509 :

This is a decision on the "Petition to Correct the Alleged Omission of Items and Evidence of the Inclusion of the Allegedly Omitted Items in the Application as Filed" filed July 17, 2002. This petition is properly treated as a petition under 37 C.F.R. §1.53(e)(2). Petitioners request that the Office accord the above-identified application a filing date of March 26, 2001, with both sequence listings in computer readable format and figures 2-5 as a part of the original application disclosure.

Application papers in the above-identified application were filed on March 26, 2001. However, on June 12, 2002, the Initial Patent Examination Division mailed applicants a "Notice to Comply with Requirements for Patent Applications containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures." Applicants were thereby notified that the application papers had been accorded a filing date; however, a copy of the "Sequence Listing" in computer readable form had not been submitted as required by 37 CFR 1.821(e) and Figures 2-5 described in the specification appeared to have been omitted. Applicants were given a TWO MONTH period from the mail date of the notice to reply to avoid abandonment, with extensions of time obtainable under 37 CFR 1.136(a).

In response, applicants timely filed the instant petition (and petition fee). Applicants assert that the items were, in fact, included with the application as filed and request that the items be officially noted as being included with the originally filed application. In support thereof, applicants submitted *inter alia* a copy of their return postcard from the USPTO. Petitioners also submitted copies of the sequence listings in computer readable format and of Figures 2-5 as originally filed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the USPTO on March 26, 2001; 2) it specifically identifies the items being filed, including "Two (2) CD-Rom" and "Twenty-four (24) Formal Drawing Sheets" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioners have shown that the items denoted, including the 2 CD-Rom and 24 Sheets of Drawings, were filed on March 26, 2001.

The application papers already considered received in the Office on March 26, 2001, were reviewed along with the missing items submitted on petition. However, these papers together do not constitute the items described on the postcard receipt as 2 CD-Rom and 24 Sheets of Drawings. The postcard receipt evidences filing of the 2 CD-Roms. Thus, petitioner has shown that the 2 CD-Roms were among the items present in the application on the date of deposit and should be included in the original application disclosure. To this extent, the petition is granted.

However, as to the 24 sheets of Drawings, petitioners have submitted 3 sheets of drawings containing figures 2-5. These together with the drawings considered received in the Office on March 26, 2001 constitute 23 sheets of drawings as figures 4 and 5 are contained on the same drawing sheet. This evidence rebuts the presumption that the postcard receipt is *prima facie* evidence of receipt of 24 sheets of drawings in the Office on March 26, 2001. Petitioners other evidence is not persuasive that 24 sheets of drawings were filed on March 26, 2001. Neither a transmittal letter nor a certificate of mailing evidences receipt in the Office of any of the items identified thereon because neither is used for verification when received in the Office.

Moreover, the drawing sheet submitted on petition containing figure 3 does not appear to include a figure. Rather, above the label "Fig. 3" there is merely a short blurred line and an arrow.

Accordingly, the petition must be DISMISSED to the extent indicated. This petition is dismissed without prejudice to reconsideration upon the submission of persuasive evidence that 24 sheets of drawings were present in the application as filed on March 26, 2001, or an adequate explanation to allow for considering 23 sheets of drawings present in the application as filed on March 26, 2001. In addition, submission of another copy of Fig. 3 as originally filed is requested.

Any request for reconsideration must be filed within **TWO (2) MONTHS** from the mail date of this decision. This period for reply is not extendable under \$1.136(a). See 37 CFR 1.181(f). Thereafter, the application file will be returned to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.

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